

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB - 1 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

SHI PENG,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 06-15861

D.C. Nos. CV-05-00007-ARM

CR-99-00030-ARM

District of the Northern Mariana
Islands

FILED
Clerk
District Court

ORDER

MAR 26 2007

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Before: GOULD and PAEZ, Circuit Judges.

The stay of this case is lifted because the Supreme Court has filed its decision in *Burton v. Stewart*, No. 05-9222, 2007 WL 43832 (U.S. January 9, 2007).

The district court has not issued or declined to issue a certificate of appealability in this appeal, which arises from the denial of appellant's motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b), filed in connection with appellant's 28 U.S.C. § 2255 proceedings. *See Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (certificate of probable cause to appeal necessary to appeal denial of post-judgment motion for relief under Rule 60(b)). Accordingly, pursuant to circuit court policy, this case is remanded to the district court for the limited purpose of granting or denying a certificate of appealability at the court's

earliest convenience. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

If the district court issues a certificate of appealability, the court should specify which issue or issues meet the required showing. *See* 28 U.S.C. § 2253(c)(3); *Asrar*, 116 F.3d at 1270. Under *Asrar*, if the district court declines to issue a certificate, the court should state its reasons why a certificate of appealability should not be granted, and the clerk of the district court shall forward to this court the record with the order denying the certificate. *See Asrar*, 116 F.3d 1270. The Clerk shall fax a copy of this order directly to the chambers of the district court judge.